

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ARISTOCRAT TECHNOLOGIES,
INC.,

Plaintiff,

vs.

LEANDRUS YOUNG,

Defendant.

2:09-CV-00348-PMP-VCF

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

This case calls upon the Court to determine whether Defendant Leandrus Young is liable to pay Plaintiff Aristocrat Technologies, Inc. for the purchase of 800 cashless gaming devices in accord with a sales agreement executed November 14, 2006, and also pursuant to personal and corporate guarantees executed by Young. For the reasons set forth below, the Court finds Plaintiff Aristocrat is entitled to judgment against Defendant Young for the unpaid balance due for the purchase of the 800 gaming devices in question.

This action was commenced February 23, 2009, by the filing of Plaintiff Aristocrat's Complaint against Defendants Young and Arturo Rojas Cardona alleging sixteen causes of action deriving from a "Cashless Redemption Device Sales Agreement" ("CRDSA") and a "Cashless Redemption Device Sale Terms and Conditions" ("CRDST&C"), referred to herein as the "First Agreement", executed

1 by Aristocrat, Cardona, and Young in October and November 2006, and personal and
2 corporate guarantees executed by Defendant Young to secure the First Agreement, for
3 the purchase of 800 cashless gaming devices to be provided by Aristocrat to EMEX,
4 S.A., a Mexican corporation for the sum of \$4,120,000. Defendant Cardona was the
5 President and Chief Executive Officer of Integradora Entretenimiento de Mexico, S.A.
6 de C.V., d/b/a EMEX, S.A.¹ This Court has subject matter jurisdiction over the case
7 pursuant to 28 U.S.C. § 1332, and venue is proper in this Court in accord with the First
8 Agreement.

9 This case proceeded to trial before the Court, sitting without a jury, following
10 which post-trial briefs were filed by the Parties. Plaintiff also filed a Motion to Amend
11 Complaint (Docs. #116 & #116-1) adding three additional causes of action for
12 fraudulent inducement, negligent misrepresentation, and negligent misrepresentation by
13 non-disclosure. Defendant Young also filed a Motion to Strike Parol Evidence (Doc.
14 #118).

15 In a prior Order denying Defendant's Motion for Summary Judgment (Doc.
16 #58), this Court ruled it would consider parol evidence to resolve ambiguity as to
17 whether the Parties understood EMEX, S.A. to be the same legal entity as
18 Entretenimiento de Mexico, C.V. and Integrado Entretenimiento de Mexico, S.A. de
19 C.V. Consistent with that ruling, the Court at trial permitted parol testimony on this
20 issue to explain the intentions of the Parties when they executed the First Agreement.
21 Defendant Young's Motion to Strike Parol Evidence does not persuade the Court to alter
22 its prior ruling. The Court will, therefore, deny Defendant Young's Motion to Strike
23 Parol Evidence (Doc. #118).

24 A preponderance of the evidence adduced at trial establishes that Plaintiff

25 ¹ On August 20, 2009, the Court entered a Default Judgment against Defendant Arturo Rojas
26 Cardona (Doc. #41).

1 Aristocrat satisfied its contractual obligation to EMEX, S.A., a Mexico corporation.
2 The testimony of virtually every witness called at trial, as well as the interchangeable
3 references to EMEX and Entretenimiento de Mexico, S.A. de C.V. in several relevant
4 exhibits supports the finding that at the time the First Agreement and Guarantees were
5 executed, the Parties understood EMEX to be Entretenimiento de Mexico, S.A. de C.V.
6 Notwithstanding Young's current claim to the contrary, the Court finds that the
7 obligation he guaranteed was based upon the common understanding of the Parties that
8 EMEX, S.A. and Entretenimiento de Mexico, S.A. de C.V. were one and the same.
9 Young never advised Aristocrat of EMEX's alleged non-existence and is now estopped
10 from asserting a defense to his obligations under the loan guarantees based upon the
11 purported non-existence of EMEX. Pelligrini v. State, 34 P.3d 519 (Nev 2001).
12 Additionally, to the extent the record would support a finding that EMEX, S.A. was not
13 formed at the time of the execution of the First Agreement, Young as the alleged
14 "controlling shareholder" of EMEX, S.A. would have known of the status of EMEX,
15 but failed to apprise Aristocrat of its status. Clearly, Aristocrat detrimentally relied
16 upon Young's assertions within the First Agreement and Young is properly estopped
17 equitably from now arguing the non-existence of EMEX, S.A. to void his obligations
18 under the First Agreement and related guarantees. Topaz mutual Co., Inc. v. Marsh, 108
19 Nev. 845, 839 P.2d 606 (1992), and Tarrant v. Monson, 96 Nev. 844, 619 P.2d 1210
20 (1980).

21 The evidence adduced at trial further supports the finding that Aristocrat
22 shipped the 800 gaming devices in question in accord with the First Agreement and the
23 subsequent instructions of Entretenimiento. The first shipment of 267 Gaming Devices
24 occurred within 90 days. The remaining 533 Gaming Devices were shipped after
25 Aristocrat complied with requests for information required by the Nevada State Gaming
26 Control Board. There is no doubt that Plaintiff and Defendants understood that

1 Aristocrat was subject to regulation by the Nevada State Gaming Control Board and the
2 Court finds it reasonable to conclude that all Parties understood that inquiries by the
3 Nevada State Gaming Control Board could result in delay of the shipment of Gaming
4 Devices to Entretenimiento. Additionally, the Court finds persuasive Plaintiff's
5 argument that delay in the second shipment of 533 Gaming Devices was excused by the
6 First Agreements Force Majeure Clause which provides:

7 "Vendor shall not be deemed in breach hereof . . . by reason of . . . any
8 delay in performance resulting from any cause beyond the reasonable
9 control of Vendor, including acts or omissions of Customer, fires,
10 labor disputes . . . or the inability to obtain labor, manufacturing
facilities or material from the usual source of Vendor or by reason of
compliance with any applicable laws, regulations or orders of any
governmental department or agency."

11 Here, inquiries by the Nevada State Gaming Control Board, and
12 circumstances beyond the control of Aristocrat occurring in the country of Serbia
13 where Aristocrat's supplier, Euro Slot, was located, caused the delay in Aristocrat's
14 second shipment of 533 Gaming Devices and are excused the First Agreement's
15 Force Majeure Clause. Similarly, delays occurring after the 533 Gaming Devices
16 arrived in Laredo, Texas were caused by Defendants and hence are also excused
17 under the First Agreement's Force Majeure Clause.

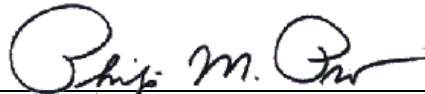
18 The Court further rejects Young's argument that he should be relieved of
19 his obligations under the guarantees on the basis that Aristocrat and Cardona
20 materially modified the First Agreement without providing Young with notice of the
21 modifications. The evidence adduced at trial establishes by a preponderance of the
22 evidence that Young waived his right to receive notice of modifications to the First
23 Agreement. Brunzell v. Golden Gate National Bank, 85 Nev. 345, 455 P.2d 31
24 (Nev. 1969). Further, as is argued by Aristocrat, the Court finds that the alleged
25 modifications to the First Agreement were not sufficiently "material" so as to cancel
26 the guarantees made by Young. Lee Tire & Rubber Co. Of New York v. McCarran,

1 56 Nev. 458, 55 P.2d 633 (Nev. 1960). Regardless, any revocation of the guarantees
2 by Young could only be effective to the extent his obligations had not already been
3 established under the First Agreement. Here, it is undisputed that Young guaranteed
4 payment for all 800 Gaming Devices and Young's revocation of his guarantees does
5 not extinguish his obligations which were fixed prior to the termination. Finally,
6 Young's argument that a novation of the Final Agreement occurred by substituting
7 Intergradon as the "Customer" for the 533 Gaming Device Shipment fails under
8 Nevada's Statute of Frauds. Nev. R. Stat. § 104.2201.

9 Based upon the foregoing Findings of Fact and Conclusions of Law, the
10 Court finds that Plaintiff Aristocrat is entitled to judgment on its claims of breach of
11 contract and breach of the covenant of good faith and fair dealing. The Court further
12 finds that based upon the guarantees, Young is obligated to pay Aristocrat's
13 reasonable attorneys' fees in bringing this action. The Court rejects Aristocrat's
14 post-trial request that it be permitted to amend its complaint to find Young liable
15 under a fraudulent or negligent misrepresentation or individual liability theory.

16 **IT IS SO ORDERED.**

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18 DATED this 17th day of October, 2012.

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23 PHILIP M. PRO
24 United States District Judge
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